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COURT OF APPEALS DIV. #1
STATE OF WASHINGTON
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**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION I**

In re the Personal Restraint Petition of
HUBBA TEAL,
Petitioner.

NO. 60720-1-I

SUPPLEMENTAL REPLY

I. INTRODUCTION

This Court recently directed the parties to submit additional briefs limited to the application of two recent Washington Supreme Court opinions. The State used the opportunity to withdraw the concessions it made in its initial set of pleadings. In its response, the State argues for the first time that Teal's offender score was actually 4.5 because he was on community placement at the time he committed the offense under attack. Putting aside the fact that neither the *Judgment* nor Teal's guilty plea makes any mention of the possibility of adding a point for community placement, the more fundamental problem with the State's argument is the simple fact that Teal *was not on community placement* at the time he committed the crime under attack in this PRP.

1 sentence was simply reduced from 15 to 14 months. Both sentences exceed maximum
2 sentence permitted by the correct range.
3

4 For the first time in its *Supplemental Response*, the State asserts that Teal was on
5 community placement for his prior assault conviction. The assault conviction is listed in
6 the criminal history section of the judgment as “Assault, 2nd degree” with a sentencing
7 date of “5/02/95.”
8

9 The judgment from the assault conviction is attached. As it plainly shows, Mr.
10 Teal was *not* sentenced to community placement for that offense. Further, he could not
11 have been legally sentenced to community placement since he was not given a prison
12 sentence.
13
14

15 It is unclear what basis the State had for asserting that Teal was on community
16 placement in its *Response*. What is clear is that the State was wrong.
17

18 III. ARGUMENT

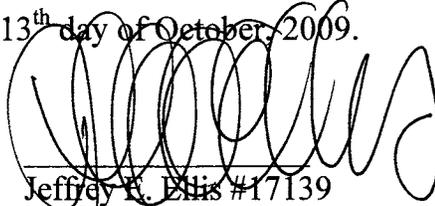
19 The State’s entire new argument is premised on a mistake of fact—a fact the State
20 did not apparently even attempt to check. The State’s earlier concessions were
21 appropriate. Its new argument is not since it is premised on a mistake of fact—much like
22 Teal’s earlier plea and sentence.
23
24

25 IV. CONCLUSION

26 Teal has demonstrated that his judgment is erroneous—all that is needed for a
27 facial invalidity showing. Thus, his petition is timely.
28
29
30

1 Examining Teal's guilty plea reveals that it was invalid. Thus, he is now entitled
2 to withdraw his plea.
3

4 DATED this 13th day of October, 2009.

5 

6
7 Jeffrey R. Ellis #17139
8 *Attorney for Mr. Teal*

9 Law Offices of Ellis,
10 Holmes & Witchley, PLLC
11 705 Second Ave., Ste 401
12 Seattle, WA 98104
13 (206) 262-0300 (ph)
14 (206) 262-0335 (fax)
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FILED

95 MAY -2 4 11:06

KAY D. ANDERSON
COUNTY CLERK
SNOHOMISH CO. WASH.

SUPERIOR COURT OF WASHINGTON
FOR SNOHOMISH COUNTY

THE STATE OF WASHINGTON,)
)
 Plaintiff,)
)
 v.)
)
 TEAL, HUBBA DEWAYNE,)
)
 Defendant.)

No. 94-1-01217-1

JUDGMENT AND SENTENCE
(Felony)

Aliases: JONATHAN D. HARRIS; DEWAYNE TEAL, August 28, 1976; HUBBA DEWAYNE TEAL, August 28, 1976; HUBBA DEWAYNE TOLES

I. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report and case record to date, the court finds:

1. CURRENT OFFENSE(S): The defendant was found guilty on 04-20-95 by plea of:

Count No.:	I	Crime: Second Degree Assault	Crime Code	_____
		RCW 9A.36.021(c)	Incident #	EVE 416031
		Date of crime 08-25-94		
Count No.:		Crime:	Crime code	_____
		RCW	Incident #	
		Date of crime		

- () Additional current offenses are attached in Appendix A.
- () With a special verdict/finding for use of deadly weapon on Count(s) NA.

The defendant is adjudged guilty of the crimes set forth above and in Appendix A.

- () Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):
NA

- () Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are:
NA

2. CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are:

	<u>Crime</u>	<u>Sentencing Date</u>	<u>Adult or Juv. Crime</u>	<u>Date of Crime</u>	<u>Crime Class</u>
(a)	TMVWOP	10-24-94	Adult		C
(b)					
(c)					
(d)					

- () Additional criminal history is attached in Appendix B.
- () Prior convictions counted as one offense in determining the offender SCORE and: NA

95-902797-4

rec. jail

3. SENTENCING DATA:

	Offender Seriousness			Maximum
	Score	Level	Range	Term
Count No. I	1	IV	6 - 12 months	10 years
Count No.				
Count No.				

() Additional current offense sentencing data is attached in Appendix C.

4. EXCEPTIONAL SENTENCE:

() Substantial and compelling reasons exist which justify a sentence (above) (below) the standard range for Count(s) NA. The reasons are set forth in Appendix D.

II. ORDER

IT IS ORDERED that defendant serve the determinate sentence and abide by the conditions set forth below:

1. Defendant shall pay to the Clerk of this Court:

(a) () \$ Waived, Court costs, including reimbursement for costs of extradition, if incurred; plus any costs determined after this date as established by separate order of this court;

(b) (x) \$100.00, Victim assessment;

(c) (x) \$ T.B.D., Total amount restitution (with credit for amounts paid by co-defendants; the amount and recipient(s) of the restitution are as established by separate order of this court;

(d) (x) \$631/\$691 Recoupment for attorney's fees; 1500 towards attorney fees, remainder waived.

(e) () \$ _____, Fine;

(f) () \$ _____, _____ Dep't, Drug enforcement fund;

(g) (x) \$ _____, Other costs;

2. (x) The above payments shall be made in the manner established by Local Rule 7.2(f) and according to the following terms: () Not less than \$ _____ per month, (x) or a schedule established by the defendant's community corrections officer, to be paid within 10 months of () this date (x) release from confinement.

3. The defendant shall remain under the Court's jurisdiction and the supervision of the State Department of Corrections for a period up to ten years to assure payment of the above monetary obligations.

4. (x) The defendant shall be prohibited from having any contact, directly or indirectly, with Alaskan Alaboudy for a period of 10 years.

5. () The defendant, having been convicted of a sexual offense, a drug offense associated with the use of hypodermic needles, or a prostitution related offense, shall cooperate with the Snohomish Health District in conducting a test for the presence of human immunodeficiency virus. The defendant, if out of custody, shall report to the HIV/AIDS Program Office at 2722 Colby, Suite 333, Everett, WA 98201 within 1 hour of this order to arrange for the test.

6. The Court, upon motion of the State, DISMISSES Count(s) NA.

7. CONFINEMENT ONE YEAR OR LESS: Defendant shall serve a term of total confinement in (✓) the Snohomish County Jail () custody of the State Department of Corrections, as follows, commencing (✓) immediately () no later than the _____ day of _____, 19 ____ at _____ .M.:

6 days/months on Count No. I
____ days/months on Count No.
____ days/months on Count No.
____ days/months on Count No.
____ days/months on Count No.

() The terms in Counts No. NA are (concurrent)(consecutive).
() The sentence herein shall run (concurrently)(consecutively) with the sentence in cause number(s) NA.

Credit is given for: 69 days served solely in regard to this offense.

(A) ALTERNATIVE CONVERSION

() _____ days of the actual term of total confinement ordered above shall be converted to partial confinement in the form of () work release, if the defendant is eligible for participation in that program () Home detention. The confinement shall be served subject to the rules and regulations of the Snohomish County Department of Corrections. Home detention is conditioned upon maintaining current employment or attending a regular course of school study at regularly defined hours or performing parental duties to minors in defendant's custody and compliance with ordered legal financial obligations.

() _____ days of the actual term of total confinement ordered above are hereby converted to _____ hours of community service under the supervision of the State Department of Corrections to be performed on a schedule established by the Community Corrections Officer and completed within _____ months of () this date () release from confinement.

(✓) Alternative conversion was not used because:

- (a) (✓) Defendant is a violent offender;
- (b) (✓) Defendant is not eligible for work release or home detention;
- (c) () Defendant has served most or all of the time imposed;
- (d) () Other: _____

(✓) (B) COMMUNITY SUPERVISION: Defendant shall serve 12 months of community supervision. Community supervision shall commence immediately but is tolled during any term of confinement. Defendant shall report no later than the next week day following this date or release from confinement to the State Department of Corrections and shall comply with all rules, regulations and requirements of that department.

The defendant's monthly probationer assessment to the State Department of Corrections is as follows:

() Full payment; () Total exemption; () Partial exemption; payments shall not exceed \$_____ per month.

() (C) OTHER CONDITIONS _____

() Additional conditions are attached in Appendix E.

The following Appendices are attached to this Judgment and Sentence and are incorporated by reference:

- () Appendix A, Additional Current Offenses;
- () Appendix B, Additional Criminal History;
- () Appendix C, Current Offense(s) Sentencing Data;
- () Appendix D, Reasons for an Exceptional Sentence;
- () Appendix E, Additional Conditions;
- () Notification of Registration Requirements.
- (✓) Order for Blood Testing.
- (✓) No Contact Order.

DONE IN OPEN COURT this 2 day of May, 1995.

Kathryn E. Trumbull
JUDGE KATHRYN E. TRUMBULL

Presented by:

Craig Matheson
CRAIG S. MATHESON, #18556
Deputy Prosecuting Attorney

Hubba Dewayne Teal
HUBBA DEWAYNE TEAL
Defendant

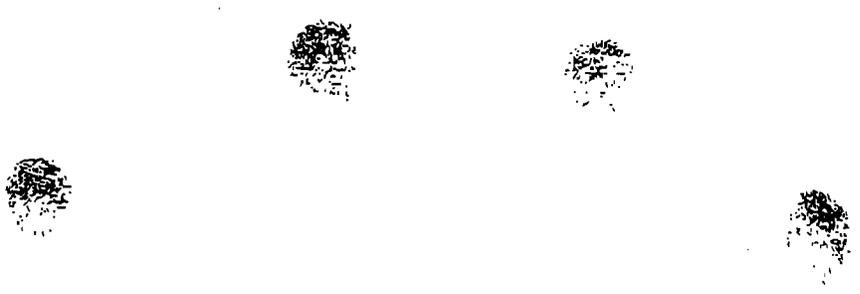
Approved as to form:

B. E. Shamulka
BRUCE E. SHAMULKA, #19748
Attorney for Defendant

Snohomish County Jail

Defendant's current address
Telephone # _____

FINGERPRINTS



Right Hand
Fingerprints of:

HUBBA DEWAYNE TEAL

* *Hubba Dewayne Teal*
(Defendant's Signature)

Dated: 5/2/95

Attested by:

Kay D. Anderson, Snohomish Co. Clerk

By: *Kay D. Anderson*
(Deputy Clerk)

CERTIFICATE

I, Kay D. Anderson, Clerk of this Court, certify that the above is a true copy of the Judgment and Sentence in this action on record in my office.

Dated: _____
Kay D. Anderson, Snohomish Co. Clerk

By: _____
(Deputy Clerk)

OFFENDER IDENTIFICATION

S.I.D. No. WA17002077
Date of Birth 08/26/76
Sex M
Race Black
ORI WA0310000
OCA 108465
OIN 03941873401
DOA 08-28-94



ORDER OF COMMITMENT

FILED

95 MAY -2 AM 11:05

KAY D. ANDERSON
COUNTY CLERK
SNOHOMISH CO. WASH.

THE STATE OF WASHINGTON to the Department of Corrections of the County of Snohomish, State of Washington:

WHEREAS, HUBBA DEWAYNE TEAL, has been convicted of the crime(s) of Count 1 Second Degree Assault, and judgment has been pronounced against the defendant that punishment be by imprisonment in the Snohomish County Department of Corrections for a period of time as specified in the attached certified copy of Judgment and Sentence, Now, Therefore,

THIS IS TO COMMAND YOU, the Snohomish County Department of Corrections, to detain the defendant pursuant to the terms of the Judgment and Sentence.

FURTHER, this is to command you that should the Judgment and Sentence authorize the release of the defendant to a Work/Training Release Facility or Program, or to any other program or for some specific purpose, this Order of Commitment shall constitute authority for you to release the defendant for that program or purpose, subject to any additional requirements of that program or purpose.

WITNESS, the Honorable KATHRYN E. TRUMBULL, Judge of Snohomish County Superior Court and the said thereof, this 2nd day of May, 1995.

KAY D. ANDERSON
CLERK OF THE SUPERIOR COURT

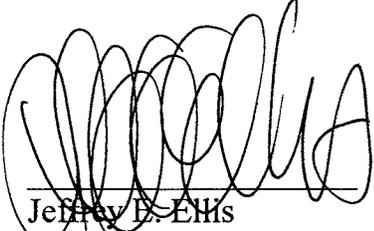
By: [Signature]
Deputy Clerk

CERTIFICATE OF SERVICE

I, Jeff Ellis, certify that on October 12, 2009, I served the party listed below with a copy of the *Supplemental Reply* by sending it postage pre-paid to:

Kimberly Thulin
Deputy Prosecuting Attorney
Whatcom Co. Prosecutor's Office
311 Grand Ave, 2nd Floor
Bellingham, WA 98225

10/12/09 Seattle, WA
Date and Place



Jeffrey B. Ellis